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THE VALUE OF ESTABLISHING SUBMITTAL PROCEDURES

Submittals bridge the gap between the design requirements in the contract documents and the details necessary to fabricate and install portions of the work. As such, submittals are an essential element of construction projects. Unfortunately, the submittal review process often does not receive the attention required. Proper procedures should be established and followed so that responsibility is allocated to the appropriate party and can be properly carried out.

Some common problems associated with the submittal review process are:

- ✓ Deviation from the submittal schedule that prevents timely review and approval and leads to costly delays in performing the work;
- ✓ Submittals that have not been checked for conformance with the contract documents by the contractor prior to being submitted to the design professional; and
- ✓ Submittals that are not required by the contract documents.

An important first step in an effective submittal review process is to clearly state the review procedures in the general conditions of the contract for construction. The standard form documents published by The American Institute of Architects (AIA), A201-1997, the Engineers Joint Contract Documents Committee (EJCDC), 1910-8, and the Associated General Contractors of America (AGC), AGC 200, all establish procedures for submittal review, but differ in some important areas.

Who reviews submittals and when?

The first issue a contractor should address in establishing a submittal review process is to determine who should prepare the submittals for review and when they need to provide those submittals. In Subparagraph 3.12.5 of AIA A201-1997, the contractor is required to send submittals to the design professional for review “with reasonable promptness and in such sequence as to cause no delay in the Work...” Similarly, Paragraph 6.17(A) of EJCDC 1910-8 requires the contractor to send submittals to the design professional “in accordance with the acceptable schedule...”

Like AIA A201-1997, AGC 200 requires submittals in such time and sequence as to cause no delay in the performance of the work. However, unlike A201-1997, Subparagraph 3.14.1 of AGC 200 requires the contractor to send submittals to the client and, “if directed,” to the client’s design professional. This requirement clearly differs from the approach taken by the AIA and EJCDC, which do not require the client’s involvement in the submittal review process. While it may be appropriate to send submittals to the client since the client and contractor have a direct contractual relationship, involvement of the design professional is vital to determine the general conformity of the submittals to the contract documents since it was the design professional who established those requirements.

What are the obligations of the contractor and reviewer?

Both the AIA and EJCDC indicate that submittal review by the design professional is for the limited purpose of checking for conformance with the contract documents, and such review does not extend to the means, methods, techniques, sequences or procedures of construction, or safety procedures. AGC 200 does not clearly state the client or design professional’s level of responsibility for review of submittals.

However, the AIA, EJCDC and AGC all state that the contractor is responsible for reviewing a submittal prior to it being submitted to the design professional or client. AIA and EJCDC documents go one step further and state that any review by the design professional does not relieve the contractor of any obligation in the contract documents.

A delay in processing submittals may result in a delay to the project. The contractor should submit properly detailed submittals in a timely manner if the contractor expects the submittals to be processed by the design professional accordingly. The contractor cannot count on an equitable adjustment of price and time if the contractor submits poorly detailed shop drawings and claims that untimely processing is delaying the contractor's performance. Conversely, the contractor's performance is contingent upon the timely processing of submittals by the design professional. If the processing is untimely, such delay may be compensable to the contractor.

To demonstrate the importance of timely submission and review of submittals, the court in *Fehlhaber Corp. v. State of New York*, 410 N.Y.2d 920 (1978), held that revisions in a design that resulted in over 2,500 changes to shop drawings and a 45-day average in processing submittals, when similar submittals at other construction projects were returned in a week, resulted in delays to the project, and the client was held liable for damages caused to the contractor. The court also noted that if the contractor's submittals failed to meet the requirements of the contract documents, delay in approval of the submittals would be the fault of the contractor, not the client. In a similar case with the opposite result, *Peabody N.E., Inc. v. Town of Marshfield*, 689 N.E.2d 774 (Mass. 1998), the court denied the contractor's request for delay damages, and held that the delayed completion of the project was caused by the contractor's delayed submission of initial shop drawings and resubmission of unapproved shop drawings.

What comes after submission to the design professional?

AGC 200 and AIA A201-1997 require that submittals be reviewed with "reasonable promptness to avoid causing delay." EJCDC 1910-8 requires the design professional to review submittals in a timely manner. This is an important "second step" in the review process. Delay in receiving a response to submittals may cause delay in the project and expose the contractor, and possibly the design professional, to liability.

What about a submittal schedule?

Because a successful submittal review process requires a collaborative effort by the design professional and contractor, the creation of a submittal schedule should also be a joint effort. There may be some portion of the work that the design professional believes requires a submittal. Since the contractor is in the best position to determine the means, methods, techniques, sequences and procedures of construction, the contractor is the logical choice for establishing when submittals should be provided. However, since the design professional is in the best position to interpret the requirements of the contract documents, the contractor should give the submittal schedule to the design professional for review and comment.

What else should the submittal review procedure address?

There is a risk of altering a design while converting it into a shop drawing. A change in the requirements of the contract documents may lead to design defects, exposing the contractor to potential liability. To minimize the risk that a material alteration may exist between the submittal and the contract documents, submittals should be reviewed by the design professional prior to actual construction. However, the general conditions produced by the AIA, EJCDC and AGC do not relieve the contractor of the obligation to construct the project in accordance with the requirements of the contract documents, despite review of submittals by the design professional. Additionally, submittal review is not an authorization for changes in the work. Changes should be accomplished through properly executed change orders, and not through the submittal review process.

Can project harmony be achieved?

It is easy to dismiss submittal review procedures as unnecessarily burdensome. However, the general conditions documents produced by the AIA, EJCDC and AGC clearly indicate that a submittal procedure that allocates responsibilities to the appropriate parties is vital to a successful project. Collaboration between the contractor and design professional on matters such as what items are included on a submittal schedule, and the timing of submission, review and return of submittals will help minimize potential problems and legal exposure.